IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 495 OF 1999

The Solapur Municipal Corporation.... Appellant.

V/s.

Shri Babu Hariba Irkal & Anr. ... Respondents.

Nitin Jamdar for the appellant.

S.D.Thokade for respondent No.1.

CORAM : D.G.DESHPANDE, J.

DATED : 3rd February, 2005.

ORAL ORDER :

. Heard learned counsel for the appellant and for respondent No.1.

2. The appellant is municipal corporation against which the Motor Accident Claims Tribunal, Solapur has awarded compensation of Rs.1,00,000/- to respondent No.1 on account of accident resulting in permanent partial disablement i.e. amputation of right leg below the ankle. There is no dispute that respondent No.1 has been permanently disabled because of the said accident. However, question is whether this is a case of total and complete negligence of the appellant's driver or it is a contributory negligence. The tribunal has fasten liability upon the appellant holding that it was total responsibility of the driver. The said

finding appears to be improper in view of the following statement of respondent No.1:

> "I was waiting for the city bus at Kumbhar Ves. Bus for Boregaon came from Railway stn. side and it passes to Boregaon via Mulegaon. The bus driver stopped his bus at Kumbhar vs stop. I could not climb the bus as the bus was fully crowded as some passengers were standing at the entrance of the road. I was standing on the ground at the entrance door of the bus for entering in the bus. But driver immediately started his bus though conductor had not given the bell. When he started the bus, passengers who were climbing the bus by the entrance door all of sudden fell down on me and I fell down on the ground and those persons fell on me. Front wheel of the bus passed on my right leg."

3. This account has been given by respondent No.1 himself as also the manner in which the accident took place. This is a clear-cut case of contributory negligence. Learned counsel for respondent No. strenuously urged that if the driver had started the bus before verifying that all the passengers have entered in the bus, then it was the negligence on the part of the driver. He relied upon two judgments in support of his contention. First judgment is 1986 (1) T.A.C. 529 (**Kumar Mohamed Rafique v. Municipal Corporation of Greater Bombay**). In that case, the driver of the bus applied the brakes suddenly, with the result, the passengers in the bus were jolted. A boy standing in the doorway holding upright bar lost his grip over it; lost his balance and tumbled down the

steps of the bus on the road and received serious injuries on his head. In that view of the matter, the Court held that it was not a contributory negligence. Admittedly, the facts are totally different. This case is, therefore, of no help to respondent No.1.

4. The second judgment which is relied upon by the counsel for respondent No.1 is 1986 (2) T.A.C. 155 (**Makbool Ahmed and others v. Bhura Lal and others**). In that case, the deceased placed his one foot on foot-board of the bus while the bus was standing at the bus stand. The conductor of the bus blew the whistle and gave the signal to the driver to start the bus. Driver set the bus in motion. The deceased could not keep the balance and fell down from the footboard of the bus and was run over and crushed by its rear wheel. In that view of the matter, the Rajasthan High Court held that the Conductor and Driver of the bus were guilty of driving the bus rashly and negligently. This case also does not apply to the facts of the present case. In any case it is an appreciation of evidence and the evidence of every case will have to be separately assessed.

5. Therefore, when respondent No.1 himself has given the account of the accident and when he has said that he fell down because other passengers fell

upon him and then his fit came under the front wheel of the bus. Admittedly, the claimant was trying to get up in the bus from the front side door. He has given admission to that extent in his cross-examination. He fell down due to rush and the other passengers also fell on him. Therefore it is a clear case of contributory negligence. This aspect has not been properly considered by the tribunal. In the circumstances, the ratio for compensation would be 60:40 between the appellant and respondent No.1. Hence I pass the following order:

O R D E R

. The appeal is partly allowed.

. The award passed by the Motor Accident Claims Tribunal is modified to the extent that the appellant will be liable to pay Rs.60,000/- only to respondent No.1 towards compensation. Rest of the judgment will remain at it is.

. The amount deposited by the appellant in pursuance of the interim order shall be returned to it after payment of amount awarded in favour of respondent No.1 along with interest thereon.

. All the concerned to act on authenticated copy of this order.

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